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2nd Civil No. B188076

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALEXANDRA VAN HORN, Plaintiff and Respondent, v. ANTHONY GLEN WATSON, Defendant and Appellant, LISA TORTI, Defendant and Respondent.	B188076 (Los Angeles County Super. Ct. No. PC034945)
ALEXANDRA VAN HORN, Plaintiff and Appellant, v. ANTHONY GLEN WATSON et al., Defendants and Respondents.	B189254

PETITION FOR REVIEW

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2nd Civil No. B188076

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ALEXANDRA VAN HORN,

Plaintiff and Appellant,

v.

ANTHONY GLEN WATSON, *Defendant and Appellant,*

and

LISA TORTI, *Defendant and Respondent.*

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION THREE
CASE NO. B188076 (SUPER. CT. NO. PC034945)

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TO THE HONORABLE CHIEF JUSTICE RONALD M. GEORGE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Respondent and defendant Lisa Torti respectfully petitions the Supreme Court for review of the published decision of the Court of Appeal, Second Appellate District, Division Three, reversing the Superior Court's entry of summary judgment in favor of Ms. Torti. A true and correct copy of the decision, filed on March 21, 2007, is attached as Exhibit A. A true and correct copy of the modification to the decision, filed on April 17, 2007, is attached as Exhibit B.

ISSUE PRESENTED FOR REVIEW

Section 1799.102 of the California Health & Safety Code[1] grants immunity to any person who "renders emergency care at the scene of an emergency." Should this Good Samaritan statute apply to an individual, who observes a serious car accident, hurries to the smoking vehicle and removes her severely-injured friend believing in good faith that it is about to catch fire or explode?

INTRODUCTION

This appeal concerns the scope of immunity under the "volunteer's" Good Samaritan statute. Section 1799.102 provides as follows:

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[1] Unless otherwise noted, all statutory references shall be to the California Health & Safety Code.

> No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.

Despite its plain language, the Court of Appeal glossed two words into the statute and read Section 1799.102 as applying only to persons who render emergency *medical* care at the scene of a *medical* emergency. In short, the person who provides CPR to an accident victim is protected, but the brave soul who runs into a burning building (or reaches into a burning car) to save another has no immunity from liability. This judicially-imposed limitation on Section 1799.102's broad grant of immunity cannot be what the Legislature intended or what sound public policy dictates.

The Court of Appeal's interpretation of "emergency care" as "emergency *medical* care" creates a number of unintended consequences. It negates the unequivocal, express legislative intent in related, Good Samaritan statutes affecting emergency personnel such as firefighters. The decision reduces statutory liability protection covering ambulance personnel and emergency medical technicians ("EMTs"). Moreover, it imposes unworkable distinctions that necessarily will discourage ordinary people from helping others during emergencies, including wide-spread disasters. Indeed, it may undercut the State of California's basic disaster preparedness scheme.

Respondent and defendant Lisa Torti observed her friend, appellant and plaintiff Alexandra Van Horn, in severe pain and physically unable to exit a smoking vehicle. Moments before, the driver of the car in which Ms. Van Horn was riding had lost control of the vehicle, left the roadway, and struck a forty-foot light standard with sufficient force that it sheared off. Ms. Torti feared that the vehicle would catch fire or explode. Without regard to her own safety, Ms. Torti acted by removing her friend from this emergency situation. Put simply, Ms. Torti is precisely the person that Section 1799.102 was designed to cover. Yet, the Court of Appeal's construction exposes Ms. Torti's actions to potential liability, which directly contravenes why Good Samaritan statutes were enacted.

It is imperative that this Court grant this Petition. It must settle the scope of immunity Good Samaritans can expect when assisting others in true emergencies.

REVIEW SHOULD BE GRANTED TO SETTLE AN IMPORTANT QUESTION OF LAW

This Petition should be granted, pursuant to Rule 8.500(b)(1) of the California Rules of Court, to settle the novel and significant issue of the scope of immunity under Section 1799.102. No published decision has interpreted this statute. Moreover, its unique position in the Act[2] leads to

[2] Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, *Health & Safety Code §§ 1797, et seq.*

novel considerations of the interplay between public policy and Good Samaritan statutory immunity.

At common law, a Good Samaritan, who renders aid to another, is potentially liable for injuries resulting from such care. Section 1799.102, however, provides unqualified immunity to any person, insofar as the person acts in good faith and in a true emergency.

This is the one Good Samaritan statute that targets true volunteers, i.e. those who act "not for compensation." In this way, the statute differs from other Good Samaritan provisions in the Act, which apply to recognized emergency and health care personnel, and related training organizations. *See, e.g., § 1799.100* (immunity for local agencies and organizations who "train people in emergency medical services"); *§ 1799.104* (qualified immunity for physicians, nurses and EMTs who give or follow "emergency instructions ... at the scene of an emergency"); *§1799.106* (qualified immunity for firefighters, police officers and EMTs who render "emergency medical services at the scene of an emergency").

The Superior Court agreed that a plain-language interpretation of Section 1799.102 reflects Good Samaritan public policy principles and held that the statute applies to any "person" -- such as Ms. Torti -- who "renders emergency care at the scene of an emergency." The Court of Appeal, however, narrows Section 1799.102 to apply only to emergency *medical* care at the scene of a *medical* emergency. In other words, the Court of

Appeal essentially leaves many, if not most, Good Samaritans once more at the mercy of common law negligence standards.

Given the widespread potential application of the Court of Appeal's novel construction of Section 1799.102 on an array of situations and people, this Court should settle the scope of immunity to which a Good Samaritan is entitled in an emergency. A Good Samaritan should not be forced to engage in a judicial guessing game about whether he or she is entitled to statutory immunity.

A PETITION FOR REHEARING WAS FILED AND DENIED

On April 5, 2007, Ms. Torti filed a Petition for Rehearing. On April 17, 2007, the Court of Appeal modified its opinion to clarify its factual findings that Ms. Torti did not render emergency *medical* care. The Court of Appeal denied the Petition for Rehearing in all other respects and did not change the ultimate reversal of the Superior Court's judgment.

STATEMENT OF THE CASE

1. STATEMENT OF FACTS

On Friday, October 31, 2003, Ms. Torti visited a nightclub in the Woodland Hills area with several friends and co-workers, including Ms. Van Horn, and defendant and appellant Anthony Glen Watson. (Torti Decl., at p. 1:18-23 [Watson AA0152].)[3] At approximately 1:15 a.m. the

[3] "Watson AA" refers to the Appellant's Appendix of Exhibits submitted by Anthony Glen Watson to the Court of Appeal on July 20, 2006.

group left the nightclub in two separate cars to drive back to Ms. Torti's home. (Torti Decl., at p. 1:24-26 [Watson AA0152]; Watson Depo., at p. 142:12-15 [Watson AA0292].) Mr. Watson drove Ms. Van Horn, who sat in the front passenger seat, and another individual, Jonelle Freed, who sat in the backseat. Ms. Torti rode behind in another car driven by a friend, Dion Ofoegbu. (Torti Decl., at p. 1:27-2:4 [Watson AA 0152-153].)

As Mr. Watson sped down a deserted Topanga Canyon Boulevard, he claimed that he saw an animal dart onto the road in front of his car. Mr. Watson swerved, lost control of the vehicle and crashed into a light pole, which fell into a nearby building.[4] (Watson Depo., at pp. 157:7-159:20 [Van Horn AA000149-000151]; Van Horn AA000120.[5]) The force of the impact crumpled the front of the car and caused the air bags to deploy. (Torti Decl., at p. 2:16-18 [Watson AA0153]; Van Horn Depo., at p. 86:9-16 [Van Horn AA000091].) In the immediate aftermath of the accident, Ms. Van Horn was in severe pain from head to toe, barely able to breathe and was physically unable to exit the vehicle. (Van Horn Depo., at p. 86:15-19 [Van Horn AA000091]; 93:20-95:1 [Van Horn AA000098-000100].)

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[4] Mr. Watson took a field sobriety test the night of the accident. His blood alcohol level did not register above the legal limit. (Watson AA0371.)

[5] "Van Horn AA" refers to the Appellant's Appendix in Lieu of Clerk's Transcript submitted by Alexander Van Horn to the Court of Appeal on December 6, 2005.

Moments later, Ms. Torti and Mr. Ofoegbu arrived at the scene. Ms. Torti saw smoke emanating from the car and an unidentifiable liquid dripping beneath it. (Torti Decl., at p. 2:24-27 [Watson AA01553].) She immediately grew worried about the possibility of a fire or an explosion. When she approached the wrecked vehicle, Ms. Torti exclaimed "Alexandra, we got to get you out of the car, the car is going to blow up!" (Van Horn Depo., at p. 91:7-10 [Van Horn AA000096]; 93:4-15 [Van Horn AA000098].) Ms. Torti then moved Ms. Van Horn from the vehicle to the ground nearby. (Torti Depo., at p. 89:15-18 [Van Horn AA000432].)

Moments later, Los Angeles City and County fire department personnel arrived on scene and immediately transported Ms. Van Horn to a hospital. (Van Horn Depo., at p. 103:6-10 [Van Horn AA000103].) She underwent emergency surgery for a lacerated liver, and had surgery for a fractured vertebrae. (Van Horn Depo., at pp. 111:11-112:11 [Van Horn AA000111-000112].) She is now permanently paralyzed. (Van Horn AA000005.)

Ms. Van Horn contends that Ms. Torti's actions either caused or exacerbated the injuries to her vertebrae and, consequently, caused her paralysis.

2. PROCEDURAL HISTORY

On May 25, 2004, Ms. Van Horn filed an action against Mr. Watson in the Los Angeles County Superior Court. On May 2, 2005, Ms. Van

Horn amended the complaint to add Ms. Torti and Mr. Ofoegbu as defendants. The sole count alleged against Ms. Torti was for negligence. On June 3, 2005, Ms. Torti filed a cross-complaint for partial indemnity and declaratory relief against Mr. Watson and Mr. Ofoegbu. A few weeks later, on June 14, 2005, Mr. Watson filed a cross-complaint for indemnity and declaratory relief against Ms. Torti.

On June 14, 2005, Ms. Torti filed a motion for summary judgment on the grounds that Section 1799.102 shielded her actions from liability. On October 17, 2005, the trial court, the Honorable Howard J. Schwab, presiding, heard oral argument. On November 15, 2005, the Superior Court entered summary judgment in favor of Ms. Torti, and found that, based on the undisputed evidence, she in good faith rendered emergency care at the scene of an emergency.

Both Ms. Van Horn and Mr. Watson appealed the Superior Court's judgment.[6] The appeals were consolidated. On March 21, 2007, the Court of Appeal filed its opinion. It reversed the grant of summary judgment on the grounds that Section 1799.102 only applies to those who render emergency *medical* care at the scene of a *medical* emergency. The Court of Appeal further found that Ms. Torti did not render emergency *medical* care as a matter of law (the Superior Court had made no finding on the issue).

[6] For purposes of appeal, Ms. Torti and Mr. Watson stipulated to judgment in Ms. Torti's favor on their respective cross-complaints, and the Superior Court entered judgment on November 29, 2005.

After Ms. Torti filed a timely Petition for Rehearing, on April 17, 2007, the Court of Appeal modified its opinion in part, but denied the Petition and did not change its ultimate opinion.

THIS COURT MUST ESTABLISH THE SCOPE OF IMMUNITY CONFERRED ON GOOD SAMARITANS

A. The Court Of Appeal's Interpretation Disregards The Statute's Plain Meaning And The Public Policy Behind Good Samaritan Statutes.

A simple point regarding the Court of Appeal decision below -- it was unnecessary from a technical, legal standpoint. Section 1799.102's meaning is plain and its wording unambiguous. The word "medical" simply does not appear in Section 1799.102. Likewise, the statute's literal effect is not pernicious either on its face generally or as applied. Yet, the Court of Appeal opinion immediately jumped into principles of statutory construction.

At common law, there is no affirmative duty to come to the aid of another. If, however, a person does aid another, the rescuer is potentially liable for injuries that allegedly result from that assistance. This potential for liability is recognized as a serious deterrent to Good Samaritans. *See* W. Prosser, Law of Torts § 56, at p. 378 (5th ed. 1984) ("[T]he good Samaritan who tries to help may find himself mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful

way rejoicing. It has been pointed out often enough that this in fact operates as a real, and serious, deterrent to the giving of needed aid").

By adopting the various Good Samaritan statutes, the Legislature sought to encourage people to render aid to others. *See Nally v. Grace Community Church of the Valley*, 47 Cal. 3d 278, 298 (1988) (Section 1799.102 and other statutes represent "the trend in the Legislature to encourage private assistance efforts. This public policy goal is expressed in the acts of the Legislature abrogating the 'Good Samaritan' rule. Statutes barring the imposition of ordinary negligence liability on one who aids another now embrace numerous scenarios.")

The plain language of Section 1799.102 "embrace[s] numerous scenarios." It applies to any "person who in good faith, and not for compensation, renders emergency care at the scene of an emergency ...." Put differently, Section 1799.102 operates as a catch-all provision for those persons, i.e., ordinary citizens, who are not designated medical professionals specified in the other Good Samaritan statutes. It is not surprising, then, that Section 1799.102 is not qualified in any way, because the Legislature intended that it apply more broadly than the other Good Samaritan statutes within the Act.

This statutory language could not be more plain. Where a statute is clear and unambiguous on its face, a court should apply the statute as written. *See, e.g., McAlexander v. Siskiyou Joint Community College*, 222

Cal. App. 3d 768, 775 (1990). Indeed, the Court of Appeal did not identify any ambiguities that would necessitate judicial reinterpretation of the statute. Without any ambiguity, the inquiry should have ended there. A court "may not speculate that the legislature meant something other than what it said. Nor may they rewrite a statute to express an intention not expressed therein." *Id.* at 775.

The Court of Appeal nevertheless listed three reasons why it read the word "medical" into Section 1799.102 in two separate places. First, it pointed to the Act's definitional section, Section 1797.70, which defines "emergency" as "a condition or situation in which an individual has a need for immediate medical attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency." That definition, however, simply focuses upon the person needing assistance, and there was no doubt but that Ms. Van Horn needed immediate medical attention as she sat in agony, having difficulty breathing and unable to exit the crumpled car on her own. This definition, then, is no reason to reinterpret the statute.

Second, the Court of Appeal noted that Section 1799.102 is located in the Act and a "general immunity statute would more likely be found in the Civil Code ...." Third, the Court of Appeal looked at the Act's general intent, which is to encourage and train others to assist at the scene of a *medical* emergency. These points, however, miss the obvious: people

injured in accidents, or caught in natural or man-made catastrophes may need to be rescued and/or transported, as well as receive medical care. Not surprising, certain of the Act's Good Samaritan statutes expressly apply to "rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person ..." and not only emergency medical care. *See § 1799.107(e).* So too, these points raised by the Court of Appeal are not a sufficient basis to rewrite Section 1799.102 in a manner contrary to public policy.

Moreover, if the Legislature had intended for Section 1799.102 to cover only *medical* emergencies, it would have included the word "medical" in the statute, just as it did in other immunity statutes within the Act. Indeed, there are any number of Good Samaritan statutes that expressly refer to "medical care," "emergency medical care" and/or "medical emergency." *See, e.g., § 1799.100* (granting immunity to local agencies and organizations who "train people in emergency medical services"); *§ 1799.106* (granting qualified immunity to firefighters, police officers and emergency medical technicians who render "emergency medical services at the scene of an emergency").

In contrast to statutes such as Sections 1799.100 and 1799.106, Section 1799.102 does not limit the type of emergency care that is rendered, or the type of emergency that must exist. Section 1799.102 is not unique in this regard. Other Good Samaritan statutes within the Act

similarly speak broadly to "emergency care" and an "emergency," and are not qualified by the word "medical." *§ 1799.104* (granting qualified immunity to physicians, nurses and EMTs who give or follow "emergency instructions ... at the scene of an emergency"). Should we nevertheless interpret all of these statutes identically, despite their patent differences? If we do, though, there will be significant and multiple unwanted consequences.

B. The Court Of Appeal's Decision Undoes The Firefighters' Good Samaritan Statute.

The Court of Appeal's analysis relies in particular on two, "related" statutes (§§ 1797.5 & 1797.70). If, however, the analysis were extended to additional, related Good Samaritan statutes, some of the unintended and unwanted consequences of the Court of Appeal interpretation become apparent. For example, Section 1799.107 provides qualified immunity to firefighters when engaged in non-firefighting activities. It was added by the Legislature in 1984, and thus six years after the Act and Section 1799.102 were enacted. The Court of Appeal's decision here not only eviscerates this firefighters' Good Samaritan statute, but it flatly contradicts the express legislative intent in enacting Section 1799.107.

Like Section 1799.102, Section 1799.107 uses the word "emergency" unqualified by the word "medical." The latter statute provides in pertinent part:

(a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) ... [N]either a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

* * *

(e) For purposes of this section, "emergency services" includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril. [Emphasis added.]

Ironically, the Legislature adopted Section 1799.107 in direct response to another Court of Appeal opinion, *Lewis v. Mendocino Fire Protection District*, 142 Cal. App. 3d 345 (1983), which narrowly interpreted a Good Samaritan statute codified in the Government Code. In *Lewis*, a camper at a state park was pinned under a large tree that had toppled over onto his tent. The camper was rescued by the local fire department, which the camper subsequently sued for his injuries. The First District ultimately held "that Government Code Section 850.4 does not

grant immunity to a fire district when its personnel negligently injure a person rescued during a non-firefighting incident." *Id.* at 346.

In reaction to *Lewis*, the Legislature enacted SB1120. The Senate Committee on Judiciary described what eventually was codified as Section 1799.107 as follows:

> KEY ISSUE
>
> SHOULD EMERGENCY RESCUE PERSONNEL BE IMMUNE FROM LIABILITY FOR NEGLIGENT ACTS WHILE PROVIDING EMERGENCY SERVICES?
>
> PURPOSE
>
> Existing law provides fireman [sic] with complete immunity while fighting fires, but a recent appellate court decision has held that the immunity does not extend to rescue operations.
>
> This bill would provide immunity for negligent acts committed by emergency rescue personnel, as defined, while providing emergency services including rescue operations.
>
> The purpose of the bill is to encourage fire departments to continue to provide rescue services.

(Request for Judicial Notice ["RJN"], Ex. C.)

As enacted, Section 1799.107 grants immunity to firefighters for injuries caused while providing "emergency services." Section 1799.107(e) defines "emergency services" to include, among other things, "first aid and medical services, *rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril*" (emphasis added). And as noted above, the Legislature passed

Section 1799.107 *six years after* the Good Samaritan statute (Section 1799.102) at issue here. The Legislature presumably understood and intended its broad definition of "emergency services" in 1984, *i.e.* it is not limited to emergency *medical* services.

Under the Court of Appeal construction below, though, "emergency services" can only mean "emergency *medical* services." So going forward, is the firefighters' Good Samaritan statute, Section 1799.107, now limited to "emergency *medical* services?" Will the local Mendocino fire department be at risk if called upon to rescue Mr. Lewis once again from underneath a tree? Or, alternatively, will the meaning of "emergency" now vary depending on which Good Samaritan statute in the Act happens to be at issue in a given situation?

C. The Court Of Appeal's Interpretation Halves The Ambulance/EMT Good Samaritan Statute.

The Court of Appeal's opinion suggests that it looked beyond Section 1799.102's plain meaning to promote a general statutory purpose and to "avoid an interpretation that would lead to absurd consequences." (Op., Ex. A, at p. 9.) In point of fact, limiting immunity only to those who render emergency *medical* care at the scene of a *medical* emergency causes nothing but unwanted "consequences."

For instance, assume that Ms. Torti moved Ms. Van Horn from the car in order for another individual to render CPR. Under the Court of

Appeal's interpretation, Ms. Torti would not be entitled to immunity under Section 1799.102 because she did not render emergency *medical* care, but the person who rendered the CPR is entitled to immunity. This illogical distinction between people responding to the same emergency should not be allowed to stand.

Just such an unintended consequence, however, becomes evident by applying the Court of Appeal's interpretation to another immunity-related statute in the Act. Section 1799.108[7] provides qualified immunity for ambulance drivers, attendants and EMTs (emergency medical technicians). These individuals may work for government agencies (fire departments, etc.) or be employed by private enterprises such as ambulance services. While public agency EMTs enjoy civil immunities codified elsewhere, *see Health & Safety Code §§ 1799.106-1799.107; Govt. Code §§ 820 et seq.*, private sector ambulance personnel and EMTs must rely on Section 1799.108's qualified immunity.

An EMT's defined scope of practice includes extricating entrapped persons. *See Cal. Code Regs., tit. 22, § 100063.* Section 1799.108 uses the same "at the scene of an emergency" language as in Section 1799.102, and

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[7] Section 1799.108 states: "Any person who has a certificate issued pursuant to this division from a certifying agency to provide prehospital field care treatment at the scene of an emergency, as defined in Section 1799.102, shall be liable for civil damages only for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith."

expressly adopts the latter statute for definitional purposes. Given the Court of Appeal's interpretation of "emergency," will private sector EMTs only enjoy immunity while performing emergency *medical* care at the scene of a *medical* emergency? Will they have no immunity while attempting to extricate accident victims from cars and buildings? If so, then these EMTs will be exposed to liability while performing a subset of their authorized duties. Surely, the Legislature did not intend for the Act to be construed in a manner that immunizes trained emergency response professionals from liability for undertaking some of their authorized duties, but not for others.

D. The Court Of Appeal's Interpretation Creates Unworkable Distinctions For Ordinary People.

While the Court of Appeal acknowledges that "any person (whether trained or not)" is granted immunity under the statute, its constrained interpretation will have a significantly adverse, if not catastrophic, impact on the ordinary heroes we hear about, read about or know. In essence, the Court of Appeal instructs that as a society we need to encourage doctors, nurses and other health care professionals to aid in medical emergencies on a volunteer basis, but that we should discourage ordinary people from assisting at the scene of a serious auto accident, or a large-scale natural or man-made disaster for that matter.

One practical (and unwanted) affect of the Court's construction may be to award immunity only to trained medical professionals. Under the Court of Appeal's opinion, only a person who attempts to render emergency *medical* care at the scene of a *medical* emergency is immune from liability. While a trained medical professional should be able to identify a *medical* emergency and render the appropriate emergency *medical* care, a layperson likely will not know where emergency *medical* care begins and ends. A layperson, therefore, may be discouraged from acting at all in an emergency situation, because of uncertain immunity based on a less-than-finite distinction between emergency care and emergency *medical* care.

Further, the Court of Appeal's holding has far-reaching effects beyond a one-victim, one-Good Samaritan scenario. In California, the State expects volunteers to respond in the aftermath of wide-spread disasters to help in the recovery and rescue of their fellow citizens. Indeed, the State has recognized that volunteers are "important assets" to any response to a major disaster.[8] (*See* RJN, Ex. G [Governor's Office of Emergency Services' "Disaster Service Worker Volunteer Program (DSWVP) Guidance"], at p. 15.)

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[8] The Governor's Office of Emergency Services calculates that approximately 10,000 convergent volunteers came forward to help after the 1989 Loma Prieta earthquake. (RJN, Ex. G, at p. 8.)

While the State affords limited immunities to volunteers registered with the Disaster Service Worker Volunteer Program (*see Govt. Code § 8657*), unregistered volunteers -- known as "convergent" volunteers -- must rely on Good Samaritan statutes. (*See* RJN, Ex. G, at p. 15 ("Convergent volunteers not registered as DSW volunteers, have some liability protection for disaster service under Good Samaritan Laws. They are not, however, provided immunities to the extent as registered DSW volunteers and are not covered for workers' compensation insurance through the DSW Volunteer Program").)

Under the Court of Appeal's interpretation, convergent volunteers, who rescue and transport victims during these disasters, would have no immunity. This "chilling effect" on the participation of convergent volunteers in rescue and other relief efforts in the aftermath of a wide-spread disaster cannot possibly have been the Legislature's intent when adopting Section 1799.102.

CONCLUSION

The Court of Appeal holding is directly contrary to the fundamental public policy behind a Good Samaritan statute, i.e., to encourage people to help one another during true emergencies without fear of liability. It makes little sense to encourage people to provide, for example, mouth-to-mouth resuscitation to a drowning victim, but to discourage selfless citizens who run into burning or collapsed buildings to save screaming children.

For the foregoing reasons, Ms. Torti respectfully requests that the Court grant this Petition for Review, and upon such review, affirm the Superior Court's judgment.

Dated: April 30, 2007

SONNENSCHEIN NATH & ROSENTHAL LLP
RONALD D. KENT
SEKRET T. SNEED

By 
RONALD D. KENT

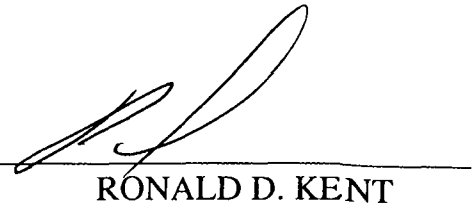
Attorneys for Defendant and Respondent
LISA TORTI

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), counsel for respondent Lisa Torti hereby certify that this Petition for Review consists of 4,313 words, as counted by the Microsoft Word 2002 word-processing program used to generate this brief.

Dated: April 30, 2007

SONNENSCHEIN NATH & ROSENTHAL LLP
RONALD D. KENT
SEKRET T. SNEED



By _____
RONALD D. KENT

Attorneys for Defendant and Respondent
LISA TORTI

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ALEXANDRA VAN HORN, Plaintiff and Respondent, v. ANTHONY GLEN WATSON, Defendant and Appellant; LISA TORTI, Defendant and Respondent. ALEXANDRA VAN HORN, Plaintiff and Appellant, v. ANTHONY GLEN WATSON et al., Defendants and Respondents.

B188076, B189254

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

2007 Cal. App. LEXIS 403

March 21, 2007, Filed

PRIOR HISTORY: [*1] Appeals from judgments of the Superior Court of Los Angeles County, No. PC034945, Howard J. Schwab, Judge.

COUNSEL: Crandall, Wade & Lowe, Edwin B. Brown; McNeil, Tropp & Braun, Jeffrey I. Braun and Frank Cracchiolo for Defendant and Appellant, Glen Anthony Watson.

Law Offices of Hutchinson & Snider and Robert B. Hutchinson for Plaintiff and Appellant.

Hanger, Levine & Steinberg, Jody Steinberg and Lisa Mead for Defendant and Respondent.

JUDGES: Croskey, J., with Klein, P. J., and Kitching, J., concurring.

OPINION BY: Croskey

OPINION:

CROSKEY, J.--In these consolidated appeals, the plaintiff Alexandra Van Horn claims that she was severely injured when, after a single vehicle accident, she was negligently removed from the vehicle by the defendant Lisa Torti and, as a result, suffered permanent paraplegia. Plaintiff appeals from a summary judgment granted in favor of Torti on the ground that Torti was entitled to immunity from liability under Health and Safety Code, section 1799.102 (section 1799.102). n1 The defendant Glen Watson was the driver of the vehicle in which plaintiff was a passenger at the time of the accident. Both he and Torti were sued [*2] by plaintiff and each filed cross-complaints against each other. n2 At the time of the accident, Torti was riding as a passenger in a second vehicle driven by the defendant Dion Ofoegbu. They were right behind Watson's vehicle when the accident occurred. Plaintiff, Torti, Watson and Ofoegbu were all friends and had been socializing together in a bar prior to the accident.

n1 Health and Safety Code, section 1799.102 provides: "No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered."

Unless otherwise stated, all statutory references are to the Health and Safety Code.

n2 Although Watson filed opposition to Torti's motion for summary judgment, Torti's motion addressed only plaintiff's complaint, not the cross-complaint filed by Watson against Torti, nor the cross-complaint filed by Torti against Watson. After the trial court issued its order granting Torti's motion for summary judgment, Torti and Watson stipulated that the order had a res judicata/collateral estoppel effect on Torti's and Watson's cross-complaints against each other and therefore judgment "is in favor of ... Torti with regard to [their cross-complaints]." Watson states the stipulation was made solely to facilitate appellate review of the summary judgment.

[*3]

As we explain, section 1799.102 has an application only to the rendering of care at the scene of a *medical* emergency. As the record demonstrates the absence of a medical emergency, Torti was not entitled to summary

judgment on this basis. As disputes of fact exist as to (1) whether Torti was negligent; and (2) whether that negligence increased the risk of harm to plaintiff, summary judgment was inappropriate. We will therefore reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND n3

n3 The facts that we recite were taken from the papers filed by the parties in support and opposition to the motion for summary judgment filed by Torti.

The accident in which plaintiff was injured took place in the early morning of November 1, 2004. During the evening of October 31, 2004, plaintiff, Torti and Jonelle Freed were relaxing at Torti's home where some marijuana was apparently shared and smoked by both plaintiff and Torti. After Watson and Ofoegbu arrived, they all went to a bar at about 10:00 p.m., [*4] where they consumed several drinks. They remained there until about 1:30 a.m. on November 1. When they left the bar, plaintiff and Freed rode as passengers in the vehicle driven by Watson and Torti rode with Ofoegbu in his vehicle.

The accident happened when Watson lost control of his vehicle n4 and crashed into a curb and light standard at about 45 miles per hour. The police concluded that it was the speed at which Watson was traveling that had caused the accident. The force of the impact caused the front air bags to deploy. Plaintiff was in the front passenger seat. When the Watson vehicle crashed, Ofoegbu pulled his vehicle off to the side of the road and he and Torti exited their vehicle to assist the other three people. Torti removed plaintiff from Watson's vehicle. Watson was able to leave the vehicle by himself. Ofoegbu assisted Freed by opening a door for her.

n4 Watson claimed that he lost control of the vehicle after he swerved to avoid an animal that had darted in front of him.

Plaintiff sued [*5] Watson, Ofoegbu and Torti. The cause of action against Torti alleged that even though plaintiff was not in need of assistance from Torti after the accident, and had only sustained injury to her vertebrae, Torti dragged plaintiff out of the vehicle, causing permanent damage to her spinal cord and rendering her a paraplegic. After some discovery, Torti moved for summary judgment.

It is clear, from the papers filed by the parties in support and opposition to Torti's motion, that there are conflicting recollections about the critical events that followed the accident. Torti apparently removed plaintiff from the vehicle because she feared the car would catch fire or "blow up." Although Torti testified at deposition that she saw smoke coming from the top of Watson's vehicle and also saw liquid coming from the vehicle, these facts were subject to dispute. There is also a dispute as to *how* Torti removed plaintiff from the car. Torti testified that she placed one arm under plaintiff's legs and the other behind plaintiff's back to lift her out of the car; plaintiff testified that Torti used one hand to grab her by the arm and pull her out of the car "like a rag doll."

Emergency personnel [*6] were called to the scene and plaintiff and Freed were treated and taken to the hospital. Plaintiff suffered various injuries, including injury to her vertebrae and a lacerated liver that required emergency surgery. There is a dispute whether the accident itself caused plaintiff's paraplegia.

The trial court, relying exclusively on section 1799.102, concluded that Torti was immune from liability and granted her motion for summary judgment. Both plaintiff and Watson have appealed (see fn. 2, *ante*).

ISSUE ON APPEAL

These appeals present the question whether the trial court correctly applied section 1799.102 to this case to find that Torti is entitled to summary judgment on the complaint, or whether it is Civil Code section 1714 and the law of negligence set out in cases such as *Williams v. State of California* (1983) 34 Cal.3d 18 [192 Cal. Rptr. 233, 664 P.2d 137] that apply to Torti's acts at the accident. n5

n5 Civil Code section 1714 states: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself."

In *Williams v. State of California*, *supra*, 34 Cal.3d 18, 23, the court stated: "As a rule, one has no duty to come to the aid of another. A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act. [Citations.] Also pertinent to our discussion

> is the role of the volunteer who, having no initial duty to do so, undertakes to come to the aid of another--the 'good Samaritan.' He is under a duty to exercise due care in performance and is liable if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking. [Citation.]"

[*7]

DISCUSSION

1. *Standard of Review*

We review the summary judgment granted to Torti on a de novo basis. (*Price v. Wells Fargo Bank* (1989) 213 Cal. App. 3d 465, 474 [261 Cal. Rptr. 735].) In doing so, we apply the same rules the trial court was required to apply in deciding that motion. When the defendant is the moving party, it has the burden of demonstrating as a matter of law that one or more elements of plaintiff's cause of action cannot be established, or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

If the defendant's presentation in its moving papers will support a finding in its favor on one or more elements of the cause of action, or on a defense thereto, the burden shifts to the plaintiff to present evidence showing that contrary to defendant's presentation, a triable issue of material fact actually exists as to those elements or the defense. (Code Civ. Proc., § 437c, subd. (p)(2).) That is, the plaintiff must present evidence that has the effect of disputing the evidence proffered by the defendant on some material fact. Thus, [*8] section 437c, subdivision (c), states that summary judgment is properly granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

2. *The Purpose of Section 1799.102*

Statutory interpretation is a question of law subject to independent judgment review. (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 219-220 [123 Cal. Rptr. 2d 735].) Our primary duty when interpreting a statute is to determine and effectuate the Legislature's intent. (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1382 [46 Cal. Rptr. 2d 542]; *People v. Ramirez* (1995) 33 Cal.App.4th 559, 563 [39 Cal. Rptr. 2d 374].) "When the language of a statute is clear and unambiguous, there is no need for interpretation and we must apply the statute as written." (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co., supra*, 39 Cal.App.4th at p. 1382.) " 'Words used in a statute ... should be given the meaning they bear in ordinary use.' (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal. Rptr. 115, 755 P.2d 299] [].)" (*People v. Ramirez, supra*, 33 Cal.App.4th at p. 563.) [*9] "However, the " 'plain meaning' " rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose' and provisions relating to the same subject matter must be construed together and 'harmonized to the extent possible.' " (*In re Kali D.* (1995) 37 Cal.App.4th 381, 386 [43 Cal. Rptr. 2d 581]; disapproved on another point in *People v. Allen* (1999) 21 Cal.4th 846, 861, fn. 16 [89 Cal. Rptr. 2d 279, 984 P.2d 486].) " ' "We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]' [Citation.] The legislative purpose will not be sacrificed to a literal construction of any part of the statute." (*Giles v. Horn, supra*, 100 Cal.App.4th at p. 220.)

As noted above, section 1799.102 states: "No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places [*10] where medical care is usually offered." The issue presented by this case is whether section 1799.102 applies to *any* emergency care rendered at the scene of *any* emergency, or whether it applies only to emergency *medical* care rendered at the scene of a *medical* emergency.

Two related statutes, and the placement of section 1799.102, provide the answer. First, a definitional section n6 specifically defines "emergency" to mean "a condition or situation in which an individual has a need for immediate medical attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency." (Health & Saf. Code, § 1797.70.) As section 1799.102 provides immunity for the rendition of "*emergency* care at the scene of an *emergency*" (italics added), the definitional section mandates the conclusion that section 1799.102 applies only to emergency medical care rendered at the scene of a medical emergency. Second, we note the location of section 1799.102. It is in the Health and Safety Code, in Division 2.5 of that code, entitled "Emergency Medical Services." It was enacted as part of the "Emergency Medical [*11] Services System and the Prehospital Emergency Medical Care Personnel Act." (Health & Saf. Code, § 1797.) This certainly sug-

gests a limited immunity for emergency medical care. A general immunity statute would more likely be found in the Civil Code, and certainly would not be in a division entitled "Emergency Medical Services." Third, Health and Safety Code section 1797.5 provides the legislative intent of the act and the related state policy, as follows: "It is the intent of the Legislature to promote the development, accessibility, and provision of emergency medical services to the people of the State of California. [P] *Further, it is the policy of the State of California that people shall be encouraged and trained to assist others at the scene of a medical emergency.* Local governments, agencies, and other organizations shall be encouraged to offer training in cardiopulmonary resuscitation and lifesaving first aid techniques so that people may be adequately trained, prepared, and encouraged to assist others immediately." (Emphasis added.) This statute confirms that the immunity provided in section 1799.102 was intended [*12] to reach only those assisting at medical emergencies.

n6 The definitional sections govern all provisions of the division, unless "the context otherwise requires." (Health & Saf. Code, § 1797.50)

A deeper analysis only reinforces the conclusion. Section 1799.102 is derived from former section 1767, which provided in pertinent part, "In order to encourage local agencies and other organizations to train people in emergency medical service programs and to render emergency medical services to others, no person who in good faith renders emergency medical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. ... The scene of an emergency shall not include emergency departments and other places where medical care is usually offered." Clearly, Health and Safety Code former section 1767 was explicit in limiting its terms to emergency medical care. Yet the omission of this language from section 1799.102 cannot be read as an intention [*13] to broaden the scope of the statutory meaning beyond that of its predecessor statute, given that the *same* legislative intent of encouraging training and assistance relating to medical emergencies has simply been *moved* to Health and Safety Code section 1797.5.

In general, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act is concerned with establishing a statewide medical services program to train citizens and professionals in lifesaving medical services. Section 1799.102 is part of a chapter entitled "Liability Limitation." The first section in that chapter is section 1799.100, which immunizes public and private entities that train citizens in how to render emergency medical services: "No local agency, entity of state or local government, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of people, excluding physicians, registered nurses, or licensed vocational nurses, as defined, in emergency medical services in training programs, shall be liable for any civil damages alleged to result from such training programs." Read together, sections [*14] 1799.100 and 1799.102 make it clear that immunity is to be extended to (1) the training of ordinary citizens in emergency medical care; and (2) to "any person" (whether trained or not) who provides that emergency *medical* care. n7

n7 Section 1799.104, the code section following section 1799.102, discusses immunity to physicians and nurses who are *trained* in emergency care. Watson argues that the placement of section 1799.102 right before immunity statutes intended for certified people is strong evidence that the statute was not intended to be applied to a non-certified or non-professional Good Samaritan *unless* they are trained and are providing emergency medical care. We would not go that far. Section 1799.102, on its face, clearly applies to "any person" providing "emergency care" at the "scene of an emergency." There is no predicate requirement that the person be trained or certified in order to claim the immunity. Thus, the critical issue is the meaning and effect to be given to the terms "emergency care" and "scene of an emergency."

[*15]

Finally, we note that there are numerous other "Good Samaritan" statutes in California, several of which would be completely superfluous if Health and Safety Code section 1799.102 was interpreted to immunize any person who, acting in good faith and without compensation, rendered *any type of* emergency care at the scene of *any* type of emergency. (See, e.g., Gov. Code, § 50086 (immunizing anyone with first aid training who is asked by government authorities to assist in a search and rescue; emergency services specifically defined to include "first aid and medical services, rescue procedures, and transportation or other related activities"); Harb. & Nav. Code, § 656 (immunizing anyone rendering assistance at a boating accident; immunity extends to "any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance").)

In sum, we conclude the immunity provided by Health and Safety Code section 1799.102 applies only to the rendition of emergency medical care at the scene of a medical emergency.

3. *Torti is Not Entitled* [*16] *to Summary Judgment*

It is clear that, as a matter of law, Torti did not provide emergency medical care to plaintiff at the scene of a medical emergency. Assuming, without deciding, that Torti believed plaintiff had to be immediately removed from the car due to a risk of fire or explosion, this risk was not a *medical* risk to plaintiff's health. Any perceived risk to plaintiff from remaining in the car was not a medical risk; moving plaintiff from the car was therefore not emergency medical care. n8

> n8 There may be circumstances in which moving someone from their current location is a matter of medical exigency, such as where a carbon monoxide poisoning victim needs to be moved to a source of fresh air. We do not hold that the act of moving a person is *never* the rendition of emergency medical care, only that it was not in this case.

There is no dispute in this record that Torti merely moved the plaintiff and did not render any emergency medical care. Section 1799.102 therefore cannot be applied to [*17] her. Rather, her liability to plaintiff must be evaluated under the standard set out in *Williams v. State of California, supra*, 34 Cal.3d at p. 23. (See fn. 5, *ante*.) n9 As disputes of fact exist as to whether Torti's removal of plaintiff from the car was negligent and whether that negligence increased the risk of harm to plaintiff, summary judgment was not appropriate.

> n9 See also CACI 450, which provides: "450. Good Samaritan [*Name of defendant*] claims that [he/she] is not responsible for [name of plaintiff]'s harm because [he/she] was voluntarily trying to protect [*name of plaintiff*] from harm. If you decide that [*name of defendant*] was negligent, [he/she] is not responsible unless [*name of plaintiff*] proves both of the following: [P] 1. [(a) That [*name of defendant*]'s failure to use reasonable care added to the risk of harm;] [or] [P] [(b) That [*name of defendant*]'s conduct caused [*name of plaintiff*] to reasonably rely on [his/her] protection;] and [P] 2. That the [additional risk/reliance] resulted in harm to [*name of plaintiff*]."
>
> In addition, see Restatement Second of Torts, section 323, which provides: "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if [P] [(a) his failure to exercise such care increases the risk of such harm, or [P] [(b) the harm is suffered because of the other's reliance upon the undertaking."

[*18] ***DISPOSITION***

The judgments in favor of Torti and against plaintiff and Watson are reversed and the matter is remanded for further proceedings consistent with the views expressed herein. Costs on appeal to plaintiff and Watson.

Klein, P. J., and Kitching, J., concurred.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ALEXANDRA VAN HORN, Plaintiff and Respondent, v. ANTHONY GLEN WATSON, Defendant and Appellant; LISA TORTI, Defendant and Respondent.	B188076 (Los Angeles County Super. Ct. No. PC034945) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING [NO CHANGE IN JUDGMENT]
ALEXANDRA VAN HORN, Plaintiff and Appellant, v. ANTHONY GLEN WATSON et al., Defendants and Respondents.	B189254

THE COURT:

It is ordered that the opinion filed herein on March 21, 2007 is modified as follows:

On page 12, the text of footnote 8 is deleted and replaced by the following language:

Torti argues that whether her removal of plaintiff from the car constituted emergency medical care is an issue of fact for the jury, not an issue of law that this court can decide on appeal. We disagree. Torti takes the position that because plaintiff was in extreme pain, she required immediate medical attention which Torti rendered to the extent she was able. We do not take issue with the intermediate conclusion that plaintiff, having been injured in a car accident, required immediate medical attention. However, there is no construction of the facts under which removing her from the car constituted *medical* care. Torti can point to no facts supporting the conclusion that plaintiff's *medical condition* would be *treated* by removing her from the car – unlike the situation of, for example, a carbon monoxide poisoning victim who needs to be moved to a source of fresh air. Indeed, it appears that Torti's removal of plaintiff from the car would have taken place if plaintiff had not been injured at all, but had simple failed to exit the car after the accident for any reason. There was simply no medical treatment motive for Torti's act. Moreover, it is possible that Torti's movement of plaintiff *prevented* plaintiff from receiving appropriate medical care for injured vertebrae, which might have included *immobilization* of the injured woman *prior* to her removal from the car.

We do not conclude that Torti was or was not *negligent* in her determination that plaintiff had to be immediately removed from the car due to the

perceived risk of fire or explosion. Nor do we conclude that Torti did or did not exercise *reasonable care* in the way in which she removed plaintiff from the car. These are both issues for the jury to determine at trial. We do conclude, however, that Torti's act of removing the injured plaintiff from the car was not, under the undisputed facts, emergency medical care.

[There is no change in the judgment.]

Torti's petition for rehearing or, in the alternative, modification of the opinion, is denied in all other respects.

Case No. B188076
Van Horn v. Watson and Torti

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 601 South Figueroa Street, Suite 1500, Los Angeles, California 90017.

On April 30, 2007, I served the within **PETITION FOR REVIEW** on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box located at Los Angeles, California, addressed as follows:

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I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after deposit for mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 30, 2007, at Los Angeles, California.

Audrey Rosenbaum